

dismissed it. Petitioner sought a rehearing upon the ground that the purchaser had actual notice of the appeal and had appeared in the Court of Appeals joining in an objection to an enlargement of time for filing the record and also seeking appointment of a receiver or an additional supersedeas bond. Petitioner also asked that if it be considered that the purchaser was not already before the court, a citation should be issued to bring him in. The Court of Appeals denied both applications. *Certiorari* was granted, 308 U. S. 534.

We are of the opinion that the action of the Court of Appeals was erroneous. If the court deemed the purchaser to be a necessary party and not before the court, the motion to issue a citation to him should have been granted. *R. S. 954*, 28 U. S. C. 777. *Dodge v. Knowles*, 114 U. S. 430, 438; *Knickerbocker Life Insurance Co. v. Pendleton*, 115 U. S. 339; *In re Knox-Powell-Stockton Co.*, 97 F. 2d 61.

The decree is reversed and the cause is remanded to the Circuit Court of Appeals for further proceedings in conformity with this opinion.

Reversed.

McGOLDRICK, COMPTROLLER OF THE CITY OF
NEW YORK, *v.* GULF OIL CORP.*

CERTIORARI TO THE SUPREME COURT OF NEW YORK.

No. 473. Argued January 2, 3, 1940.—Decided January 15, 1940.

Jurisdiction to review the judgment of a state court can not be entertained if it does not affirmatively appear that the decision did not rest upon an adequate non-federal ground.

CERTIORARI, 308 U. S. 545, to review 281 N. Y. 647; 22 N. E. 2d 480, dismissed.

* Rehearing granted, Feb. 5, 1940, see *post*, p. 692.

Mr. Paxton Blair, with whom *Messrs. William C. Chanler* and *Sol Charles Levine* were on the brief, for petitioner.

Mr. Matthew S. Gibson for respondent.

By leave of Court, *Messrs. George deForest Lord* and *Woodson D. Scott* filed a brief on behalf of the Cunard White Star, Ltd., as *amici curiae*, challenging the validity of the tax.

PER CURIAM.

The City of New York, through its Comptroller, assessed a tax against respondent with respect to sales of oil manufactured in that city in a bonded manufacturing warehouse, Class 6, established pursuant to the customs laws of the United States, the crude oil having been imported from Venezuela and the sales of the manufactured oil having been made to supply fuel to vessels engaged exclusively in foreign commerce. The Appellate Division, First Department, annulled the determination of the Comptroller considering the tax to be a burden upon foreign commerce. 256 App. Div. 207. The Court of Appeals affirmed the order of the Appellate Division, without opinion. 281 N. Y. 647. Certiorari was granted, 308 U. S. 545.

In the absence of an explicit statement by the Court of Appeals that it annulled the assessment of the tax solely because of violation of the federal Constitution, we are unable to find that the decision of the highest court of the State did not rest upon an adequate non-federal ground. *Jud. Code*, § 237 (b), 28 U. S. C. 344 (b). *Lynch v. New York*, 293 U. S. 52; *Honeyman v. Hanan*, 300 U. S. 14; *New York City v. Central Savings Bank*, 306 U. S. 661.

The writ of certiorari is dismissed for the want of jurisdiction.

Dismissed.